

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GENE ALLEN,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No. 3:07-CV-00433-ECR-(VPC)

**ORDER**

Petitioner has submitted a Notice of Appeal (#7). To appeal the denial of a petition for a writ of habeas corpus, Petitioner must obtain a certificate of appealability, after making a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c).

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy §2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th Cir. 2000). The Court dismissed this action because Petitioner had not sought authorization from the Court of Appeals for the Ninth Circuit to file a second or successive petition. Order (#2). Reasonable jurists would not find this conclusion to be debatable or wrong.

1           Petitioner has also submitted a Motion for Docketing Statement (#8). Petitioner  
2 cryptically states that he “may be in fact in receipt of administrative proceedings to further litigate  
3 ones case effectively,” and cites Smith v. Bennett, 365 U.S. 708 (1961), which concerns filing fees  
4 for state post-conviction remedies and indigent inmates. To the extent that Petitioner wants a copy  
5 of the docket sheet, the Court will grant his motion.

6           IT IS THEREFORE ORDERED that a Certificate of Appealability is **DENIED**.

7           IT IS FURTHER ORDERED that the Motion for Docketing Statement (#8) is  
8 **GRANTED** in part. The Clerk of the Court shall send Plaintiff a copy of the docket sheet.

9           DATED: April 7, 2008

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12           EDWARD C. REED  
13           United States District Judge  
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